

VETERINARY MEDICAL BOARD

Disciplinary Guidelines



July 2012

Board Members

Tom Kendall, DVM, President

Kim Williams, RVT, Vice-President

Patti Aguiar, Public Member

Richard G. Johnson, DVM

Judie Mancuso, Public Member

Linda Starr, Public Member

Richard Sullivan, DVM

Cheryl Waterhouse, DVM

Special thanks to former Board President Stephanie Ferguson, DVM

Executive Officer

Susan M. Geranen

Enforcement Program Manager

Sandra Monterrubio



Veterinary Medical Board
2005 Evergreen Street, Suite 2250
Sacramento CA 95815

Phone: 916-263-2610; Fax 916-263-2621
Website: www.vmb.ca.gov

TABLE OF CONTENTS

Business and Professions Code Sections

Introduction. 1

Penalties by Business and Professions Code Section Number

4883(a); 4837(b) Conviction of a crime substantially related to veterinary medicine . . . 2

4883(b); 4837(d) Lending name to illegal practitioner. 3

4883(c); 4837(e); 4836.5 Violation of the provisions of this chapter 3

4883(d)(e) Fraud or dishonesty regarding biological tests; Improper
employment to demonstrate the use of biologics in animals 4

4883(f) False advertising 5

4883(g); 4837(c) Unprofessional conduct - drugs 6

4883(g) General unprofessional conduct. 8

4883(h) Failure to keep premises and equipment clean and sanitary 9

4883(i) Negligence. 10

4883(i) Incompetence. 11

4883(i) Fraud or deception. 12

4883(j); 4839.5 Aiding or abetting in acts which are in violation of this chapter. 13

4883(k); 4837(a) Fraud or misrepresentation in obtaining a license 13

4883(l) Discipline of license in another state or territory 14

4883(m) Cruelty to animals or conviction on a charge of cruelty to animals, or both . . 14

4883(n) Disciplinary action taken by other agencies that relate to the practice of
veterinary medicine 15

4883(o) Violation or the assisting or abetting violation of any Board regulations 16

4855 Written records 17

4856 Inspection of records and premises 17

4857 Record Confidentiality 18

4830.5 Duty to report staged animal fighting. 18

4830.7 Duty to report animal abuse or cruelty 19

4836.5; 4837 Disciplinary proceedings against veterinarians and RVTs 19

Probation Terms and Conditions

Standard terms and conditions of probation 20

Optional terms and conditions of probation 23

Overview guide for disciplinary decisions 29

BUSINESS AND PROFESSIONS CODE SECTIONS

INTRODUCTION

The Veterinary Medical Board (Board) developed the Disciplinary Guidelines outlined in this manual for its Executive Officer, staff, legal counsel, administrative law judges, and other persons involved in the Board's enforcement process to be used for the purpose of creating judgment orders in formal disciplinary actions. These guidelines are published in regulations for the public and the profession so that the processes used by the Board to impose discipline are readily available and transparent.

The Board recognizes that each case is unique and that mitigating or aggravating circumstances in a particular case may necessitate variations. Therefore, the Board has developed minimum and maximum penalties to assist in determining the appropriate penalty. If an accusation is sustained and less than the minimum penalty is assessed, the Board requires information from the administrative law judge on the circumstances that resulted in less than the minimum penalty being assessed. In addition, probationary conditions are divided into two categories: 1) standard terms and conditions that are used for all cases; and 2) optional terms and conditions that are used for specific violations and circumstances unique to a specific case.

The Board licenses veterinarians and registers veterinary premises and veterinary technicians. If there is action taken against both the individual license and the premises permit, then the disciplinary order should reflect actions against both. However, in some cases, minimum standard violations are so severe that it is necessary to take immediate action and close a facility. In these instances, the veterinary license and the premises permit may be disciplined separately, and the disciplinary order should reflect separate action.

Because of the severity of cases resulting in action by the Office of the Attorney General, the Board has established that the minimum penalty shall always include revocation or suspension with the revocation or suspension stayed and terms and conditions of probation imposed. The imminent threat of the revocation or suspension being reinstated helps to ensure compliance with the probationary terms and conditions. It is the recommendation of the Board that in any case involving a violation related to alcohol or drug abuse violations that the minimum term of probation should be five years. In addition, in any case involving a violation related to alcohol or drug abuse violations the mandatory terms and conditions listed specifically for this type of cases shall be imposed.

In cases where the penalties deviate from the minimum to maximum range without explanation of the deviation, the Board may non-adopt the Proposed Decision and review the case itself.

PENALTIES BY BUSINESS AND PROFESSIONS CODE SECTION NUMBER

SECTION 4883(a); 4837(b)	
Violation	Conviction of a crime substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty (as appropriate)	Revocation and/or suspension stayed Two-year probation \$2,000 fine Standard terms and conditions Optional terms and conditions including but not limited to: Suspension Limitations on practice Supervised practice No ownership of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Continuing education Psychological evaluation and/or treatment Medical evaluation and/or treatment Rehabilitation program Submit to drug testing Abstain from controlled substances/alcohol Community service Restitution Ethics training
<p>Maximum penalties should be considered if the criminal act caused or threatened harm to an animal or the public, if there have been limited or no efforts at rehabilitation, or if there were no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if there is evidence of an attempt(s) at self-initiated rehabilitation. Evidence of self-initiated rehabilitation includes, but is not limited to, pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve general society's interactions with animals. Self-initiated rehabilitation measures also include, but are not limited to, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, completions of treatment or other conditions of probation ordered by the court, or full compliance with all laws since the date of the occurrence of the criminal act.</p>	

SECTION 4883(b); 4837(d)	
Violation	Having professional connection with, or lending the licensee's or registrant's name to, any illegal practitioner of veterinary medicine and the various branches thereof.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 30-day suspension for each offense No ownership, of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client or if there are prior violations of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

SECTION 4883(c); 4837(e); 4839.5	
Title Violation	Violation or attempt to violate, directly or indirectly, any of the provisions of the chapter.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: Restitution Ethics training
<p>Maximum penalties should be considered if the actions were intended to subvert investigations by the Board or in any way hide or alter evidence that would or could be used in any criminal, civil, or administrative actions.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

SECTION 4883(d)(e)	
Violation	Fraud or dishonesty in applying, treating, or reporting on tuberculin or other biological tests. Employment of anyone but a veterinarian licensed in the State to demonstrate the use of biologics in the treatment of animals.
Maximum Penalty	Revocation or suspension and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$5,000 fine Optional terms and conditions including but not limited to: 30-day suspension of license and/or premises permit Continuing education Community service
<p>Maximum penalties should be considered if the acts or omissions caused public exposure of reportable diseases (rabies, brucellosis or tuberculosis) or other hazardous diseases of zoonotic potential.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

SECTION 4883(f)	
Violation	False or misleading advertising.
Maximum Penalty	Revocation and/or suspension and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation 60 day suspension Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: Restitution Ethics training
<p>Maximum penalties should be considered if the advertising was deceptive, caused or threatened harm to an animal, or caused a client to be misled and suffer monetary damages. One of the probationary terms in that case should be restitution to any client damaged as a result of the violation. The more severe penalty should be considered when there are prior violations of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

SECTION	4883(g); 4837(c)
Violation	<p>Unprofessional conduct, that includes, but is not limited to the following:</p> <p>(1) Conviction of a charge of violating any federal statutes or rules or any statute or rule of this state regulating dangerous drugs or controlled substances.</p> <p>(2)(A) The use of, or prescribing for, or administering to himself or herself, any controlled substance.</p> <p>(B) The use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages to the extent, or in any manner as to be dangerous or injurious to a person licensed or registered under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person so licensed or registered to conduct with safety the practice authorized by the license or registration.</p> <p>(C) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.</p> <p>(3) A violation of any federal statute, rule, or regulation or any of the statutes, rules, or regulations of this state regulating dangerous drugs or controlled substances.</p>
Maximum Penalty	Revocation and a \$5,000 fine
<i>continued on next page</i>	

SECTION	4883(g); 4837(c) <i>continued</i>
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$5,000 fine Optional terms and conditions including but not limited to: 30-day suspension Supervised practice Psychological evaluation and/or treatment Medical evaluation and/or treatment Surrender DEA license/send proof of surrender to Board within 10 days of the effective date of the decision. No ownership, of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Rehabilitation program Submit to drug testing Abstain from use of alcohol and drugs
<p>Maximum penalties should be considered if acts or omissions caused or threatened harm to an animal or a client.</p> <p>Minimum penalties may be considered if acts or omissions did not cause harm to an animal, there are no prior violations of the same type of offense, and there is evidence of self-initiated rehabilitation.</p> <p>When considering minimum penalties, the terms of probation should include a requirement that the licensee submit the appropriate medical reports (including psychological treatment and therapy), submit to random drug testing, submit to a limitation of practice, or practice under the supervision of a California licensed veterinarian as applicable on the facts of the case, and submit quarterly reports to the Board (in writing or in person as the Board directs). Note: in any violation related to alcohol or drug violations the Board requires a minimum of five years probation.</p>	

SECTION 4883(g)	
Violation	General unprofessional conduct.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty (as appropriate)	<p>Written Public Reproval</p> <p>Revocation and/or suspension stayed</p> <p>Two-year probation</p> <p>Standard terms and conditions</p> <p>Optional terms and conditions including but not limited to:</p> <ul style="list-style-type: none"> Suspension Limitations on practice Supervised practice No ownership of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Continuing education Psychological evaluation and/or treatment Medical evaluation and/or treatment Rehabilitation program Submit to drug testing Abstain from controlled substances/alcohol Community service/ Restitution Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused substantial harm to an animal or a client, or there are prior actions against the licensee or registrant.</p> <p>Minimum penalties may be considered if there are no prior actions, if there are mitigating circumstances such as the length of time since the offense(s) occurred, if the acts or omissions did not cause substantial harm to an animal or a client, and if there is evidence of a self-initiated rehabilitation.</p>	

SECTION 4883(h)	
Violation	Failure to keep the licensee's or registrant's premises and all equipment therein in clean and sanitary condition. (Requirements for sanitary conditions are also outlined in Sections 4853.5 and 4854 (practice sanitation standards).
Maximum Penalty	Revocation or suspension of premises permit and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000 Optional terms and conditions including but not limited to: A ten- to thirty-day suspension or suspension until compliance with minimum standards of practice is achieved Random hospital inspections
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations, for example, unsanitary or hazardous workplace, improper sterilization of instruments, or improper husbandry practices.</p> <p>Minimum penalties may be considered people if the acts or omissions did not cause or threaten harm to animals or people, remedial action has been taken to correct the deficiencies, and there is remorse for the existing unsanitary conditions.</p> <p><i>Note - A veterinary license and a premises permit can be disciplined separately.</i></p>	

SECTION 4883(i)	
Violation	Negligence in the practice of veterinary medicine.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Three-year probation Standard terms and conditions Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000 Optional terms and conditions including but not limited to: A ten- to thirty-day suspension or suspension until in compliance with minimum standards of practice is achieved Random hospital inspections
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to animals or people, remedial action has been taken to correct the deficiencies and there is remorse for the negligent acts.</p>	

SECTION 4883(i)	
Violation	Incompetence in the practice of veterinary medicine
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/ or suspension stayed Three-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 90-day suspension Supervised practice/ Hospital inspections Continuing education Clinical written examination Community service Restitution Ethics training
<p>Maximum penalties should be considered based on the following factors: if the acts or omissions caused harm to an animal or an animal has died, there are limited or no efforts at rehabilitation, or there are no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if the acts or omissions did not cause substantial harm to an animal, there is evidence of rehabilitation, and there are mitigating circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.</p>	

SECTION 4883(i)	
Violation	Fraud and/or deception in the practice of veterinary medicine.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Three-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 90-day suspension Hospital inspections Supervised practice Clinical written examination Community service Restitution Ethics training
<p>Maximum penalties should be considered based on the following factors: if the acts or omissions caused harm to an animal or an animal has died, there is limited or no evidence of rehabilitation or no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if the acts or omissions did not cause substantial harm to an animal, there is evidence of rehabilitation and there are mitigation circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.</p>	

SECTION 4883(j); 4839.5	
Violation	Aiding or abetting in acts which are in violation of any of the provisions of this chapter.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client and the acts were repeated after a prior violation of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client, there were no prior actions, and there is evidence of remorse and an acknowledgement of the violation.</p>	

SECTION 4883(k); 4837(a)	
Violation	Fraud, misrepresentation, or deception in obtaining a license or registration.
Maximum and Minimum Penalty	Revocation and a \$5,000 fine
<p><i>Note - In this instance, the gravity of the offense warrants revocation in all cases since there was no legal basis for licensure in the first place.</i></p>	

SECTION 4883(l)	
Violation	The revocation, suspension, or other discipline by another state or territory of a license, certificate, or registration to practice veterinary medicine or as a veterinary technician in that state or territory.
Maximum Penalty	Revocation
Minimum Penalty	The penalty that would have been applicable to the violation if it had occurred in the State of California

SECTION 4883(m)	
Violation	Cruelty to animals or conviction on a charge of cruelty to animals, or both.
Maximum Penalty	Revocation and a \$5,000 fine.
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$5,000 fine Optional terms and conditions including but not limited to: 30-day suspension Psychological evaluation and/or treatment Medical evaluation and/or treatment Continuing education Ethics training
<i>Note - While the Board believes this violation is so severe that revocation is the only appropriate penalty, it recognizes that a lesser penalty may be appropriate where there are mitigating circumstances.</i>	

SECTION 4883(n)	
Violation	Disciplinary actions taken by any public agency in any state or territory of any act substantially related to the practice of veterinary medicine or the practice of a veterinary technician.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 30-day suspension Continuing education
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or the public, there is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if there is evidence of attempts at self-initiated rehabilitation taken prior to the filing of the accusation. Self-initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, completions of treatment or other conditions of probation ordered by the court, and full compliance with all laws since the date of the occurrence of the violation.</p>	

SECTION 4883(o)	
Violation	Violation, or the assisting or abetting violation of any regulations adopted by the Board pursuant to this chapter.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/ or suspension stayed Two-year probation Standard terms and conditions 30-day suspension \$1,000 fine Optional terms and conditions including but not limited to: Continuing education Restitution Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to the animal or the public, there was more than one offense, there is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the offense(s).</p> <p>Minimum penalties may be considered if there is evidence of attempts at self-initiated rehabilitation. Self-initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, completion of treatment or other conditions of probation ordered by the court, and full compliance with all laws since the date of the occurrence of the violation.</p>	

SECTION 4855	
Title Violation	Written records.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/ or suspension stayed Two-year probation Standard terms and conditions 30-day suspension \$1,000 fine Optional terms and conditions including but not limited to: Continuing education
<p>Maximum penalties should be considered when there are a lack of records or omissions and/or alterations that constitute negligence.</p> <p>Minimum penalties may be considered when there is evidence of carelessness and corrective measures have been implemented to correct the process whereby the records were created.</p>	

SECTION 4856	
Violation	Failure to permit the inspection of records or premises by the Board.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Ethics training
<p>Maximum penalties should be considered if there is a deliberate attempt to prevent access to the Board, prior discipline of the managing licensee or the premises, or no mitigating circumstances at the time of the refusal.</p> <p>Minimum penalties may be considered when there are mitigating circumstances at the time of the request for records, where there is no deliberate attempt to prevent the Board from having access to the records or when there are no prior actions.</p>	

SECTION 4857	
Violation	Impermissible disclosure of information about animals and/or about clients.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension
<p>Maximum penalties should be considered when breaching confidentiality puts the animals or clients in jeopardy.</p> <p>Minimum penalties may be considered when the breach is inadvertent or when there is no prior action against the licensee.</p> <p><i>Note - The severity of violations may determine whether action taken is citation and fine or formal discipline.</i></p>	

SECTION 4830.5	
Violation	Duty to report staged animal fighting.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Continuing Eeducation Ethics training
<p>Maximum penalties should be considered when an animal or animals have been killed or severely harmed.</p> <p>Minimum penalties may be considered on a case-by-case basis.</p>	

SECTION 4830.7	
Violation	Duty to report animal abuse or cruelty.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Considered on a case-by-case basis

SECTION 4836.5; 4837	
Violation	Disciplinary proceedings against veterinarians and registered veterinary technicians.
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Continuing Education Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client, or the acts were repeated after a prior violation of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or client, or if there are no prior violations.</p> <p><i>Note - The Practice Act is very specific on the authorized duties for RVTs that cannot be performed by unregistered assistants; therefore, these violations are more serious due to their blatant nature.</i></p>	

PROBATION TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS OF PROBATION (1-11)

The Board recommends one- to five-year probation, as appropriate, in cases where probation is part of a disciplinary order.

All standard terms and conditions are included in every order of probation applied to the licensee or registrant subject to discipline (Respondent).

1. Obey all Laws

Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. Further, within thirty (30) days of any arrest or conviction, respondent shall report to the Board and provide proof of compliance with the terms and conditions of the court order including, but not limited to, probation and restitution requirements.

2. Quarterly Reports and Interviews

Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all terms and conditions of probation. In addition, the Board, at its discretion, may request additional in-person reports of the probationary terms and conditions. If the final written quarterly report is not made as directed, the period of probation shall be extended until such time as the final report is received by the Board. Respondent shall make available all patient records, hospital records, books, logs, and other documents to the Board, upon request.

3. Cooperation with Probation Surveillance

Respondent shall comply with the Board's probation surveillance program. All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent. Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. Respondent shall notify the Board of any change of name or address or address of record within thirty (30) days of the change. Respondent shall notify the Board immediately in writing if Respondent leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California.

4. No Preceptorships or Supervision of Interns

Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor.

5. Notice to Employers

Respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions, and restrictions imposed on Respondent by the decision in this case. Within thirty (30) days of the effective date of this decision and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his or her employer to report to the Board in writing, acknowledging the employer has read the Accusation and decision in this case and understands Respondent's terms and conditions of probation. Relief veterinarians shall notify employers immediately.

6. Notice to Employees

Respondent shall, upon or before the effective date of this decision, post or circulate a notice which actually recites the offenses for which Respondent has been disciplined and the terms and conditions of probation, to all registered veterinary employees, and to any preceptor, intern or extern involved in his or her veterinary practice. Within fifteen (15) days of the effective date of this decision, Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and decision in the case and understand Respondent's terms and conditions of probation.

7. Owners and Officers (Corporations or Partnerships): Knowledge of the Law

Respondent shall provide, within thirty (30) days after the effective date of the decision, signed and dated statements from the owners, officers, or any owner or holder of ten percent (10%) or more of the interest in Respondent or Respondent's stock, stating said individuals have read and are familiar with federal and state laws and regulations governing the practice of veterinary medicine.

8. Tolling of Probation

If Respondent resides out of state upon or after effective date of the decision, he or she must comply with the following conditions only: quarterly reports and interviews, tolling of probation, continuing education and cost recovery. If Respondent returns to California he or she must comply or be subject to all probationary conditions for the period of probation.

Respondent, during probation, shall engage in the practice of veterinary medicine in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board. Should Respondent fail to engage in the practice of veterinary medicine in California as set forth above, the time outside of the practice shall not apply to reduction of the probationary terms.

9. Violation of Probation

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, or if the Attorney General's Office has been requested to prepare any disciplinary action against Respondent's license, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. Completion of Probation

All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent. Failure to pay all costs due shall result in an extension of probation until the matter is resolved and costs paid. Upon successful completion of probation and all payment of all fees due, Respondent's license will be fully restored.

11. Cost Recovery and Payment of Fines

Pursuant to Section 125.3 of the California Business and Professions Code, within thirty (30) days of the effective date of this decision, Respondent shall pay to the Board its enforcement costs including investigation, hearing, and probationary monitoring in the amount of _____ or the Respondent shall make these payments as follows: _____. FAILURE TO PAY THIS AMOUNT TO THE BOARD BY THE STATED DEADLINE SHALL RESULT IN AUTOMATIC REVOCATION OF THE LICENSE FORTHWITH, WITHOUT FURTHER NOTICE OR AN OPPORTUNITY TO BE HEARD.

OPTIONAL TERMS AND CONDITIONS OF PROBATION (1-21)

Note - In addition to the standard terms and conditions of probation, optional terms and conditions of probation are assigned based on violations and fact patterns specific to individual cases.

1. Suspension – Individual License

As part of probation, Respondent is suspended from the practice of veterinary medicine for _____, beginning the effective date of this decision. During said suspension, Respondent shall not enter any veterinary hospital which is registered by the Board. Additionally, Respondent shall not manage, administer, or be a consultant to any veterinary hospital or veterinarian during the period of actual suspension and shall not engage in any veterinary-related service or activity.

2. Suspension – Premises

As part of probation, Premises License Number _____, issued to Respondent _____, is suspended for _____, beginning the effective date of this decision. During said period of suspension, said premises may not be used by any party for any act constituting the practice of veterinary medicine, surgery, dentistry, and/or the various branches thereof.

3. Posted Notice of Suspension

If suspension is ordered, Respondent shall post a notice of the Board's Order of Suspension in a place clearly visible to the public. The notice, provided by the Board, shall remain posted during the entire period of actual suspension.

4. Limitation on Practice/Inspections

A. During probation, Respondent is prohibited from practicing _____
(Type of practice) _____

B. During probation, Respondent is prohibited from the following:

1. Practicing veterinary medicine from a location or mobile veterinary practice which does not have a current premises permit issued by the Board; and
2. If Respondent is the owner or managing licensee of a veterinary practice, the following probationary conditions apply:
 - a. The location or mobile veterinary practice must not only have a current premises permit issued by the Board, but must also be subject to inspections by a Board representative to determine whether the location or veterinary practice meets minimum standards for a veterinary practice. The inspections will be conducted on an

announced or unannounced basis and shall be held during normal business hours. The Board reserves the right to conduct these inspections on at least a quarterly basis during probation. Respondent shall pay the Board for the cost of each inspection, which is \$500. If the veterinary practice has two consecutive non-compliant inspections, Respondent shall surrender the Premises Permit within ninety (90) days from the date of the second consecutive non-compliant inspection.

- b. As a condition precedent to any Premises Permit issued to Respondent as owner or managing licensee, the location or mobile veterinary practice for which the application is made shall be inspected by a Board representative to determine whether the location or mobile veterinary practice meets minimum standards for a veterinary practice. Respondent shall submit to the Board, along with any premises permit application, a \$500 inspection fee.

5. Supervised Practice

Respondent shall practice only under the supervision of a veterinarian approved by the Board. The supervision directed may be continuous supervision, substantial supervision, partial supervision, or supervision by daily review, as deemed necessary by the Board. All costs involved with practice supervision shall be borne by Respondent.

Each supervisor shall have been licensed in California for at least five (5) years and not have ever been subject to any disciplinary action by the Board. The supervisor shall be independent, with no prior business or personal relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner, or associate of Respondent.

Within thirty (30) days of the effective date of the decision, Respondent shall have his or her supervisor submit a report to the Board in writing stating the supervisor has read the decision in case number _____. Should Respondent change employment, Respondent shall have his/her new supervisor, within fifteen (15) days after employment commences, submit a report to the Board in writing stating the supervisor has read the decision in case number _____.

Respondent's supervisor shall, on a basis to be determined by the Board, review and evaluate all or a designated portion of patient records of those patients for whom Respondent provides treatment or consultation during the period of supervised practice. The supervisor shall review these records to assess

- 1) the medical necessity and appropriateness of Respondent's treatment;
- 2) respondent's compliance with community standards of practice in the diagnosis and treatment of animal patients;
- 3) respondent's maintenance of necessary and appropriate treatment;
- 4) respondent's maintenance of necessary and appropriate records and chart entries; and

- 5) respondent's compliance with existing statutes and regulations governing the practice of veterinary medicine.

Respondent's supervisor shall file monthly reports with the Board. These reports shall be in a form designated by the Board and shall include a narrative section where the supervisor provides his or her conclusions and opinions concerning the issues described above and the basis for his or her conclusions and opinions. Additionally, the supervisor shall maintain and submit with his or her monthly reports a log designating the patient charts reviewed, the date(s) of service reviewed, and the date upon which the review occurred. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board.

If respondent is an employee rather a veterinary hospital owner, the supervisor shall additionally notify the Board of the dates and locations of all employment of respondent, during each month covered by his/her report.

6. No Ownership

Respondent shall not have any legal or beneficial interest in any business, firm, partnership, or corporation currently or hereinafter licensed or registered by the Board and shall not own any veterinary hospital.

7. No Management or Administration

Respondent shall not manage or be the administrator of any veterinary hospital.

8. Continuing Education

Within sixty (60) days of the effective date of this decision, and on an annual basis thereafter, Respondent shall submit to the Board for its prior approval, an educational program or course related to Respondent's specific area(s) of weakness which shall not be less than _____ hours per year, for each year of probation. Upon successful completion of the course, Respondent shall provide proof to the Board. This program shall be in addition to the Continuing Education required of all licensees. All costs shall be borne by Respondent.

9. Clinical Training

Within sixty (60) days of the effective date of this decision, Respondent shall submit an outline of an intensive clinical training program to the Board for its prior approval. The exact number of hours and the specific content of the program shall be determined by the Board or its designee. Respondent shall successfully complete the training program and may be required to pass an examination related to the program's contents administered by the Board or its designee. All costs shall be borne by Respondent.

10. Clinical or Written Examination

Within sixty (60) days of the effective date of this decision, or upon completion of the education course required above, or upon completion of the clinical training programs, Respondent shall take and pass a species specific practice (clinical/written) examination to be administered by the Board or its designee. If Respondent fails this examination, Respondent must wait three (3) months between reexaminations, except that after three (3) failures, Respondent must wait one (1) year to take each necessary reexamination thereafter. All costs shall be borne by Respondent. If Respondent fails to take and pass this examination by the end of the first year of probation, Respondent shall cease the practice of veterinary medicine until this examination has been successfully passed and Respondent has been so notified by the Board in writing.

11. Psychological Evaluation

Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo a psychiatric evaluation by a Board-appointed psychotherapist (psychiatrist or psychologist), to determine Respondent's ability to practice veterinary medicine safely, who shall furnish a psychological report to the Board or its designee. All costs shall be borne by Respondent.

If the psychotherapist (psychiatrist or psychologist) recommends and the Board or its designee directs psychotherapeutic treatment, Respondent shall, within thirty (30) days of written notice of the need for psychotherapy, submit the name and qualification of one of more psychotherapists of Respondent's choice to the Board for its prior approval. Upon approval of the treating psychotherapist by the Board, Respondent shall undergo and continue psychotherapy until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly written reports to the Board. All costs shall be borne by Respondent.

ALTERNATIVE: PSYCHIATRIC EVALUATION AS A CONDITION PRECEDENT TO PRACTICE

As of the effective date of the decision, Respondent shall not engage in the practice of veterinary medicine until notified in writing by the Board of this determination that Respondent is mentally fit to practice safely. If recommended by the psychotherapist (psychiatrist or psychologist) and approved by the Board or its designee, Respondent shall be barred from practicing veterinary medicine until the treating psychotherapist recommends, in writing and stating the basis therefore, that Respondent can safely practice veterinary medicine, and the Board approves said recommendation. All costs shall be borne by Respondent.

12. Psychotherapy

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one

or more psychotherapists of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require Respondent to undergo psychiatric evaluations by a Board-appointed psychiatrist. All costs shall be borne by Respondent.

13. Medical Evaluation

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board appointed physician, to determine Respondent's ability to practice veterinary medicine safely, who shall furnish a medical report to the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within thirty (30) days of written notice from the Board, submit the name and qualifications of a physician of Respondent's choice to the Board for its prior approval. Upon approval of the treating physician by the Board, Respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall have the treating physician submit quarterly written reports to the Board. All costs shall be borne by Respondent.

ALTERNATIVE: MEDICAL EVALUATION AS A CONDITION PRECEDENT TO PRACTICE

As of the effective date of this decision, Respondent shall not engage in the practice of veterinary medicine until notified in writing by the Board of its determination that Respondent is medically fit to practice safely. If recommended by the physician and approved by the Board or its designee, Respondent shall be barred from practicing veterinary medicine until the treating physician recommends, in writing and stating the basis therefore, that Respondent can safely practice veterinary medicine, and the Board approves said recommendation.

14. Rehabilitation Program – Alcohol or Drug

Within thirty (30) days of the effective date of this decision, Respondent shall submit in writing a(n) alcohol/drug rehabilitation program in which Respondent shall participate (for the duration of probation/for one/for two years) to the Board for its prior approval. In the quarterly written reports to the Board, Respondent shall provide documentary evidence of continuing satisfactory participation in this program. All costs shall be borne by Respondent.

15. Submit to Drug Testing

Respondent shall immediately submit to drug testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and to Respondent's current employer.

16. Abstain from Controlled Substances

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4211 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness. Respondent shall submit to random drug testing during the period of probation.

17. Abstention from Alcohol Use

Respondent shall abstain completely from the use of alcoholic beverages.

18. Community Service

Within sixty (60) days of the effective date of this decision, Respondent shall submit a community service program to the Board for its prior approval. In this program Respondent shall provide free services on a regular basis to a community or charitable facility or agency for at least _____ (_____) hours per _____ for the first _____ of probation. All services shall be subject to prior Board approval.

19. Fine

Respondent shall pay to the Board a fine in the amount of _____ (not to exceed five thousand dollars) pursuant to Business and Professions Code sections 4875 and 4883. Respondent shall make said payments as follows: _____ .

Pursuant to Business and Professions Code Section 125.3, enforcement costs (investigative, legal, and expert review), up to the time of the hearing, can be recovered.

20. Restitution

Respondent shall make restitution to any injured party in the amount of _____. Proof of compliance with this term shall be submitted to the Board within sixty (60) days of the effective date of this decision.

Note - Name and address of injured party may be inserted in the body of this term.

21. Ethics Training

Respondent shall submit to the Board for its prior approval, an ethics training course for a minimum of _____ hours during the probationary period. Upon successful completion of the course, Respondent shall provide proof to the Board. All costs shall be borne by Respondent.

OVERVIEW GUIDE FOR DISCIPLINARY DECISIONS

Most of the background information provided below is contained in the Department of Consumer Affairs' Reference Manual for Board Members and gives an overview of part of a board's disciplinary process. Certain aspects of this overview were changed by the passage of SB 523 (Kopp, Chapter 938, Statutes of 1995). The changes were in regard to ex parte communications.

Accusation/Statement of Issues

The principal responsibility of a licensing board is to protect the public. This is accomplished by determining whether a license should be issued and whether a disciplinary action should be taken against a license. The Administrative Procedure Act prescribes the process necessary to deny, suspend, or revoke a license. An action to suspend or revoke a license is initiated by the filing of an Accusation. An action to deny a license is initiated by a Statement of Issues.

In disciplinary matters, a Deputy Attorney General (DAG) acts as the Board's prosecutor and coordinates all necessary legal proceedings. If a case is referred to the Office of the Attorney General (OAG) and accepted for prosecution, the DAG assigned the matter will prepare a Statement of Issues or an Accusation. The person against whom the action is filed is called the Respondent.

Once drafted, the Statement of Issues or Accusation is forwarded to the Executive Officer (EO) for approval. Except where the preparation of administrative pleadings is voluminous and routine, the EO will normally review an Accusation or Statement of Issues for accuracy. Board staff will then assign a case number and the EO will sign it before returning it to the OAG for service on the Respondent.

The document is then served on the Respondent. The Respondent may contest the charges by filing a Notice of Defense. The DAG will then schedule a hearing before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).

Administrative Hearing Process

An administrative hearing is similar to a trial in a civil or criminal court. Both parties have the opportunity to introduce evidence (oral and documentary) and the Respondent has a right to confront his or her accusers. Although a board may sit with the ALJ and hear the case, most cases are heard by the ALJ alone because it is a complex procedure and may require anywhere from several days to several weeks of time.

In order to take discipline against a license issued by the Board, either a veterinarian or registered veterinary technician, it must be demonstrated by "clear and convincing evidence" that a violation of law or regulation has occurred. The clear and convincing standard is more than the "preponderance of the evidence" standard required for civil trials but less than the "beyond a reasonable doubt" standard for criminal trials.

To sustain a citation against a licensee, the allegations need only be proven to the "preponderance of the evidence" standard.

Proposed Decision

After hearing all the witnesses and arguments and considering all of the evidence presented, the ALJ renders a Proposed Decision that contains: 1) findings of fact, 2) a determination of issues, and 3) a proposed penalty (assuming a violation is found). The Proposed Decision is then submitted to the Board for consideration and a final decision. The Proposed Decision must be acted upon by the Board within 100 days of receipt, or it becomes final by operation of law as proposed by the ALJ.

In making a decision whether to adopt the Proposed Decision as its own decision, the Board may only consider the Proposed Decision itself; the Board may not consider evidence about the case not contained in the Decision. The Board may consider advice of legal counsel regarding their options, the legal sufficiency of the Proposed Decision, and the law applicable to the case at hand. If a Board member is personally acquainted with the licensee to a degree that it affects their decision-making ability, or the Board member has received evidence about the case not contained in the Proposed Decision, the Board member should recuse him or herself from any discussion about the case and the vote on the matter.

The Board may vote on the Proposed Decision by mail ballot or at a meeting in a closed session. Although a Proposed Decision carries great weight based on the fact that the ALJ was a witness to the evidence presented at the hearing, the actual testimony of the witnesses and the demeanor of those witnesses, the Board is the final decision-maker. The Board should consider the ALJ's narrative explanation in the Decision and how the Disciplinary Guidelines were applied. If the Decision is outside the Disciplinary Guidelines, the ALJ must explain to the satisfaction of the Board, the factors that were proved that caused the ALJ to deviate from the standards.

Adopting any decision is a serious responsibility of a Board member. When considering a Proposed Decision, the Board's legal counsel is present to respond to questions about the legal parameters of the case and the Board's authority. Board members must take time to fully discuss each case and to seek clarification from legal counsel for any question they may have prior to making a final decision on the case.

When considering a Proposed Decision, the Board has three basic options:

1. adopt the Decision as written including the proposed penalty;
2. adopt the Decision and reduce the penalty; or
3. not adopt the Proposed Decision.

Non-Adopt - Rejecting a Decision

A Board may choose not to adopt a Proposed Decision of an ALJ for many reasons that might be grouped generally under the following categories:

1. The Board finds the penalty or terms of probation inappropriate to the violation(s).
2. The Board disagrees with the ALJ's determination of the issue(s) in the case.

When a Proposed Decision is not adopted, the Board is required to obtain a copy of the transcript of the hearing and documentary evidence unless this requirement is waived

by all parties. Each Board member must read the entire transcript and consider only that evidence presented at the hearing. The DAG and the Respondent are entitled to submit written arguments, or oral argument if the Board so orders, on the case to the Board. The Board must render its own decision after reading the transcript and arguments within 100 days from the receipt of the transcript. After the decision has been rendered, all parties will be served with the Decision After Non-Adoption.

The Board can elect to return the non-adopted decision to the OAH if it feels that additional evidence is required before the Board can render its decision. In this instance, the case is returned to the OAH and a new hearing date is scheduled. After the new hearing is complete the ALJ, the same one as before or a new ALJ if the prior one is unavailable, will issue a new Proposed Decision and the Board will consider the Proposed Decision anew.

Petition for Reconsideration

A Respondent has a right to and may petition the Board before the effective date of the decision for reconsideration of the Board's decision.

If a Board does vote to reconsider its decision, it is equivalent to not adopting a Proposed Decision and the steps listed above apply. If the 30-day time period lapses or the Board does not act on the petition, the request for reconsideration is deemed to be denied by operation of law and the Board no longer has jurisdiction over the matter.

Appeal Process – Writ of Administrative Mandamus

A Respondent has the right to request reconsideration and if denied, file a Writ to appeal a disciplinary action imposed by a Board.

A decision rendered by a Superior Court can be further appealed to the Court of Appeals and then to the Supreme Court by either the Board or the Respondent.

Stipulated Agreement

Once an Accusation has been filed, rather than proceeding to a formal hearing and prior to requesting that the Board consider settlement terms and conditions, the Respondent shall provide mitigating factors and evidence of rehabilitation. Mitigating factors include factors beyond the control of the licensee that existed for a brief period of time but no longer exists that may mitigate the need for certain types of discipline. Evidence of rehabilitation would show that Respondent has taken serious steps to improve behavior and correct actions that led to the need for disciplinary action. The parties may then stipulate (agree) to a determination of the violations charged against the Respondent and to a proposed penalty. Stipulations are negotiated and drafted by the DAG representing the Board and the Respondent and his/her legal counsel. In negotiating a stipulation, the DAG works closely with the Board's EO (or designated Enforcement Program Manager) and utilizes the Board's Disciplinary Guidelines to arrive at a stipulation that is intended to be acceptable to the Board.

The stipulation is presented to the Board for its consideration in much the same way that a Proposed Decision is presented. Once a stipulation has been signed by the licensee and his or her counsel, if any, the Board must vote to approve or disapprove the stipulation as a whole. If the Board votes to disapprove a proposed stipulation, it may send back recommendations for inclusion into any future stipulations. The Board may look beyond the mere contents of an Accusation, though it must confine its consideration to information that is relevant to the charges at hand. While there is no time limit within which a stipulation must be considered, any undue delays should be avoided.

Default Decisions

Default Decisions are rare; however, in some cases, the Respondent does not respond to an Accusation by returning the Notice of Defense, fails to return the Notice of Defense in a timely manner, or fails to appear at a scheduled hearing. There is a legal obligation to respond to an Accusation and to be present at a scheduled hearing. Failure to meet the legal obligations is grounds for a Default Decision whereby the discipline is imposed based on the Respondent's failure to respond. In these cases the Board need only demonstrate that it has served the Accusation on the licensee at the licensee's address of record. This is one reason it is imperative that licensees maintain a current address of record with the Board; failure to do so can have very serious consequences if the licensee becomes subject to an Accusation but has an old address of record on file with the Board because the Board has no legal obligation to make any attempt to locate the licensee. Service of an Accusation by first class mail is all that is required to prove proper service.

The result of a Default Decision is nearly always a straight revocation of the license. If the Respondent is also a managing licensee for a premises permit, the premises permit will automatically be canceled by operation of law. If the Accusation was pled against the premises as well as the licensee, the premises permit is revoked along with the license.

Definitions

Negligence - A departure from the standard of care or practice. It can be an act of omission or commission. Harm or injury is not a necessary component of administrative negligence because we do not seek monetary damages (redress).

Incompetence - A lack of knowledge or ability in discharging professional obligations.

Fraud and Deception -

Deception - Any act or omission that deceives or misleads another person.

Fraud - An intentional act or omission to deceive or mislead another person by misrepresentation, deceit, or concealment of a material fact.

Both fraud and deception can exist despite truthful statements if the statements made, whether written or oral, have a tendency to mislead or, do in fact, mislead.



Veterinary Medical Board

2005 Evergreen Street, Suite 2250

Sacramento, CA 95815-3831

vmb.ca.gov